

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN SECTION OF TENNESSEE
WESTERN DIVISION

SCOTT TURNAGE , CORTEZ D.)	
BROWN, DEONTAE TATE, JEREMY S.)	Case No. 2:16-cv-2907-SHM/tmp
MELTON, ISSACCA POWELL, KEITH)	
BURGESS, TRAVIS BOYD, TERRENCE)	
DRAIN, and KIMBERLY ALLEN on)	
behalf of themselves and all similarly)	
situated persons,)	
)	
PLAINTIFFS,)	
)	
v.)	
)	
)	
)	
)	
BILL OLDHAM, FLOYD BONNER, JR.,)	
ROBERT MOORE, KIRK FIELDS,)	
CHARLENE McGHEE, REGINALD)	
HUBBARD, DEBRA HAMMONS,)	
TIFFANY WARD, SHELBY COUNTY,)	
TENNESSEE, TYLER TECHNOLOGIES,)	
INC., GLOBAL TEL*LINK)	
CORPORATION, SOFTWARE AG)	
CLOUD AMERICAS, INC., SIERRA-)	
CEDAR, INC., SIERRA SYSTEMS)	
GROUP, INC., and TETRUS CORP.,)	
)	
DEFENDANTS.)	

**PLAINTIFFS' NOTICE OF FILING OF ESI SEARCH TERMS AND RELATED
ELECTRONIC CORRESPONDENCE PURSUANT TO ORDER GOVERNING
PRODUCTION OF COURT RECORDS AND ELECTRONICALLY STORED
INFORMATION (ECF. NO. 180)**

Plaintiffs Scott Turnage, Cortez D. Brown, Deontae Tate, Jeremy S. Melton, Issacca Powell, Keith Burgess, Travis Boyd, Terrence Drain, and Kimberly Allen, on behalf of themselves and all other similarly situated persons (hereinafter referred to as "Plaintiffs"), by and through their designated attorneys, and pursuant to the request of this Court on June 25, 2019,

submit their Notice of Filing of ESI Search Terms and Related Electronic Correspondence pursuant to this Court's March 19, 2019 Order Governing Production of Court Records and Electronically Stored Information (hereinafter referred to as "the Court's ESI Order," ECF No. 180). Plaintiffs hereby submit the following materials to the Court:

1. On December 29, 2018, William E. Routt (counsel for Plaintiffs) sent to Odell Horton, Jr. (counsel for the Shelby County Defendants) and others an email containing Plaintiffs' initial ESI search terms and Custodian List. The December 29, 2018 email, which includes the Custodian List, and the initial ESI search terms are attached collectively hereto as **EXHIBIT A**.

2. Pursuant to 6(a), (b) & (c) of the Court's ESI Order, the Shelby County Defendants were ordered to produce all ESI information called for by Plaintiffs' search terms set forth in **EXHIBIT A**, with all such documents designated as "Attorneys Eyes Only," under the Amended Agreed Protective Order. (*See*, ECF No. 180, ESI Order at ¶s 6(a), (b) & (c), p. 4).

3. Upon receipt of the ESI produced by the Shelby County Defendants as "Attorneys Eyes Only" as required above, Plaintiffs were then required to perform a search to designate documents that were responsive to Plaintiffs' First Set of Requests for Production of Documents (served on the Shelby County Defendants **on August 3, 2017**, almost two years ago). (ESI Order at ¶s 6(e), p. 5).

4. So as to comply with the ESI Order, on June 19, 2019, William E. Routt sent to Odell Horton, Jr., Byron N. Brown, IV, and others an email designating the documents that Plaintiffs consider responsive to their First Requests for Production of Documents. Plaintiffs advised that these documents were determined by a revision to Plaintiffs' initial ESI search terms, which reduced the initial data set of 292,697 documents to 168,563 documents, thereby eliminating 124,134 documents from the data set. The June 19, 2019 email and revised ESI

search terms are attached collectively hereto as **EXHIBIT B**. When this search is performed, the “control numbers” (*i.e.*, numbers akin to Bates numbers that are applied to every document, whether or not it is ultimately produced) appear for each document that Plaintiff contends should be produced.

5. Pursuant to 6(e) of the ESI Order, the Shelby County Defendants have the right (but not the obligation to) review the documents designated by Plaintiffs for relevance, privilege, and appropriate classification under the Amended Agreed Protective Order:

Following Plaintiffs’ completion of their responsiveness review and designation of responsive documents, the Shelby County Defendants shall have the opportunity to review the designated documents for relevance, privilege, and appropriate classification under the Amended Agreed Protective Order. After determining whether privilege and/or confidentiality applies to the designated documents, the Shelby County Defendants will produce the designated, non-privileged documents as single-page, Bates labeled TIFF images with a separate, image-only load file in addition to the comprehensive load file requested by Plaintiffs and shall otherwise satisfy the requirements of the production format requested by Plaintiffs on December 29, 2018, unless otherwise agreed by the parties.

ESI Order at 6(e), p. 5(emphasis added)

6. The Shelby County Defendants are not required to conduct any such review and are fully shielded from any adverse consequences should they choose not to conduct such a review or in the event that their review fails to prevent the production of any document that the Shelby County Defendants would later desire to exclude as being privileged or otherwise deems objectionable. Indeed, the ESI Order contains a specific “claw back provision” indicating that the Shelby County Defendants production of any and all documents shall not constitute the waiver of any “applicable privilege or ground for withholding production:”

Pursuant to Rule 502(d) of the Federal Rules of Evidence, no applicable privilege or ground for withholding production is waived, in this or any future proceedings, by production of documents or disclosure of information pursuant to this Order, and the parties shall not be required to

meet the requirements of Fed. R. Evid. 502(b)(1)-(3) in order to preserve any applicable privilege. Upon demand, Plaintiffs shall return any paper copies to the Shelby County Defendants and delete all electronic copies of privileged or protected ESI that is produced pursuant to this Order. To the extent that the parties disagree over the application of these principles or challenge the privileged nature of produced ESI, Plaintiffs shall not make use or disclosure of the ESI in question until the matter is resolved by the Court.

ESI Order at 6(f), pp. 5-6.

7. On June 24, 2019, Byron N. Brown, IV sent to William E. Routt, Odell Horton, Jr., and others an email responding to Mr. Routt's June 19, 2019 email. The June 24, 2019 email is attached hereto as **EXHIBIT C**. The Shelby County Defendants apparently contend that Plaintiffs' revised search terms are somehow different than a formal designation of the documents Plaintiffs contend are relevant – but they are not. As mentioned above, the revised search terms yields each unique control number, enabling the Shelby County Defendants to review all such documents for privilege and relevance, should they so desire.

WHEREFORE, Plaintiffs respectfully request that the Court enforce Section 6(e) of the ESI Order by ordering the Shelby County Defendants to comply with said provision within the next thirty (30) days.

Respectfully submitted,

s/ Michael G. McLaren

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CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of June, 2019, a true and correct copy of the foregoing pleading has been filed electronically with the Court's Electronic Case Filing System. Pursuant to the Court's ECF System, the following parties listed below are filing users who will receive notice of the foregoing document's filing:

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